In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-982

EDWARD GRADY PARTIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner, who was convicted of criminal contempt of court for wilfully violating an injunction issued pursuant to Section 301 of the Taft-Hartley Act, 61 Stat. 156-157, 29 U.S.C. 185, contends that he was entitled to a jury trial under 18 U.S.C. 3692.[1]

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[1] 18 U.S.C. 3692 provides:

In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or

Following a non-jury trial [2] in the United States District Court for the Middle District of Louisiana, petitioner was convicted of criminal contempt, in violation of 18 U.S.C. 401(3). He was sentenced to six months' imprisonment. The court of appeals affirmed in a comprehensive opinion (Pet. App. A).

1. Delta Concrete Products Company, Inc. ("Delta") had a collective bargaining agreement with its employees, who were members of General Truck Drivers, Warehousemen and Helpers Local Union No. 5. The agreement contained a clause providing for compulsory arbitration in all disputes involving claims of improper discharge of Delta employees. To facilitate this arbitration provision, the contract also contained a clause prohibiting strikes and lockouts (Pet. 3; Pet. App. B, 23).

Following the discharge of a union member by Delta in October, 1974 (Tr. 14-15), Local Union No. 5 and petitioner, its business agent, violated the collective bargaining agreement by causing picketing, striking and a work stoppage (Tr. 14-21). On November 27, the same day picketing commenced, Delta filed suit in the United States District Court for the Middle District of Louisiana, seeking injunctive relief to enforce the collective bargaining agreement.

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restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed.

[2] Petitioner made no pretrial request for a jury (Pet. App. A, 12).

The district court found that the union conduct constituted a *prima facie* violation of the agreement (Pet. App. B, 24), and issued temporary restraining order pursuant to Section 301 of the Taft-Hartley Act, 61 Stat. 156-157, 29 U.S.C. 185 enjoining the union, its members and agents from continuing the violations (Pet. App. B, 26-27; Ex. 1). The order was served on the afternoon of November 27.

Despite the restraining order, picketing continued on November 29 and December 2-3. Although there was no picketing on December 4, the work stoppage continued until December 5 (Tr. 22, 64-66).[3] Thereafter, petitioner and Delta reached a compromise agreement to resolve the labor dispute. Petitioner was convicted of criminal contempt for his role in perpetuating the illegal union activities in violation of the temporary restraining order (Pet. App. B, 23-35).

2. In *Muniz* v. *Hoffman*, 422 U.S. 454, this Court held that 18 U.S.C. 3692, which is derived from Section 11 of the Norris-LaGuardia Act,[4] does not require a jury trial in contempt proceedings arising out of

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[3] No picketing or work stoppages took place on November 28 and 30, and December 1, which were holidays (Pet. 3-4).

[4] Section 11 of the Norris-LaGuardia Act, 47 Stat. 72-73, 29 U.S.C. (1946 ed.) 111, read, in pertinent part, as follows:

> In all cases arising *under this Act* in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed: * * *. [Emphasis added.]

the violation of an injunction under Section 10(*l*) of the Taft-Hartley Act, 61 Stat. 149-150, as amended, 29 U.S.C. 160(*l*). Noting that the injunction in *Muniz* was sought by the National Labor Relations Board, petitioner claims that the *Muniz* rationale does not extend to wilful disobedience of an injunction obtained by a private party under Section 301 of the Taft-Hartley Act and *Boys Market, Inc.* v. *Retail Clerks Union*, 398 U.S. 235. It matters not, however, whether the government or a private party obtains injunctive relief under the Act: "[b]y providing for labor act injunctions outside the framework of Norris-LaGuardia, Congress necessarily contemplated that there would be no right to jury trial in contempt cases." *Muniz, supra*, 422 U.S. at 463-464.

As this Court held (*id.* at 463):

> * * * § 11 was limited by its own terms and by judicial decision to cases "arising under" the Norris-LaGuardia Act. *United States* v. *Mine Workers*, 330 U.S. 258, 298 (1947). Injunctions issued pursuant to either the Wagner Act or Taft-Hartley Act were not issued "under," but in spite of Norris-LaGuardia; and contempt actions charging violations of those injunctions were not "cases arising under" Norris-LaGuardia. Section 11 of Norris-LaGuardia was thus on its face inapplicable to injunctions authorized by the Wagner and Taft-Hartley Acts * * *. [Footnote omitted.]

This conclusion as to the scope of 18 U.S.C. 3692 is underscored by the legislative history of its codification into the Criminal Code. "Not a word was said in connection with recodifying § 11 as § 3692 * * * that would suggest any * * * important change in the settled intention of Congress, when it enacted the Wagner and Taft-Hartley Acts, that there would be no jury trials in contempt proceedings arising out of labor act injunctions." *Id.* at 467. Thus, the court of appeals correctly held, "[h]ere, as in *Muniz*, an injunction was entered 'outside the framework of Norris-LaGuardia.' The injunction is entitled, therefore, to the traditional protection of non-jury contempt proceedings" (Pet. App. A, 17, footnote omitted).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

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